

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13005 of Bakers Local Union, No. 118, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-paragraph 3101.410 to continue accessory parking in an R-1-B District at the premises 2706 Bladensburg Road, N.E., (Square 4345, Lot 7).

HEARING DATE: August 15, 1979  
DECISION DATE: November 7, 1979

FINDINGS OF FACT:

1. The subject lot 7 is located on the north side of Evarts Street between 30th Street and Bladensburg Rd., N. E. The subject lot 7 is to the west of an office building on lot 8 for which it provides accessory parking. Both lots are known as 2706 Bladensburg Rd., N.E. Lot 7 is in an R-1-B District. Lot 8 is in a C-2-A District.

2. In BZA Order No. 10476, dated November 16, 1970, the Board first approved the subject lot 7 as accessory parking for the applicants office building. In BZA Order No. 11592, dated June 25, 1974, the Board granted the continued use of the subject lot for a period of five years.

3. BZA Order No. 10476 required that the applicant provide a seven foot buffer with landscaping next to the abutting residential property on lots 15 and 16 and a cedar fence on the easterly side of the buffer.

4. The subject site, lots 7 and 8, are approximately 12, 708 square feet in area. Lot 7 is within thirty-five feet from the office building to which it is accessory. Lot 7 has parking facilities for fifteen automobiles.

5. The applicant testified that lot 7 was in compliance with all provisions of Article 74 of the Zoning Regulations.

6. The frontage of property along Bladensburg Road, N.E. at the subject location is strip zoned. The depth of the C-2-A zoning is fifteen feet along Evart Street, N.E.

7. Both lots 7 and 8 are of restrictive size and the adjacent property to the north is in adverse ownership and unavailable for off-street parking.

8. The intersection of Evart Street and Bladensburg Rd., N.E. forms an irregular angle at the subject property, lots 7 and 8, which gives an unusual shape to lot 8 on which the office building is located.

9. The working hours at the office building are from 9:00 a.m. to 5:00 p.m., Monday through Friday. Approximately five employees work in the office building.

10. One executive board meeting is held on the first Saturday of each month between the hours of 10:00 a.m. and 2:00 p.m. Approximately fifteen persons attend this meeting. The applicant also holds membership meetings approximately four times a year. The attendance at these meetings approximates 110 persons.

11. Three parties whose property face on the subject parking lot appeared at the public hearing in opposition to the application. Three letters from property owners within 200 feet of the subject property were submitted to the record at the public hearing as in opposition to the application. The general grounds of the opposition were that the applicant had turned the subject parking lot into a playground and hangout where children and adults gathered resulting in litter accumulations, noise from shouting and offensive language, noise from the use of bikes and motor scooters, alleged use of dope and alleged planning to break into neighboring homes. All of this resulted in many calls to the police department. The more specific grounds from the opposition who testified at the public hearing were the breaking and entering into their homes, the taking of personal property and broken windows. One neighbor testified that the applicant had not lived up to its promise to extend its screening fence along the rear lot line of her property which she testified to as a side lot line of the subject parking lot. Another neighbor testified that since the excavation on the subject lots for the construction of the office building and the parking lot, there has been erosion of the soil of her rear yard creating a severe slope causing damage to her home, her chain fence and her rear yard. She further testified that the applicant's fence to the rear of her property was constructed on the excavation line and accordingly, is not five feet high but some three feet. She further testified that

there was a hole in the fence of some two years and that as a result the children go through this gap in the fence or climb over other parts of the fence and go on to her property. She further complained that the chain fence across the lot even when it is not broken is of such a height that the children can step over it onto the lots. There were no objections raised to the use of the lot by the applicant or its employees.

12. The applicant in rebuttal testified that the hole in the fence had been repaired but the fence was destroyed again by the children. The applicant had permitted the use of the lot to the children to provide a safe place for the children off the streets. When he had attempted to preclude the children from using the lot further damage was done to the property. He further testified that there were no motorscooters used on the lot but rather skateboards, bicycles and basketballs. As to the issue of the extension of the fence along the rear lot line of the neighbor's property the applicant testified that the proposed extension would be on property that was not owned by the applicant but by the Amoco gas station. As to the excavation and the alleged damage to another neighbor's property this issue as to liability was now in court. The applicant further testified that the lot that is trespassed through the hole in the fence belongs to the applicant and not the objectant.

13. The single member district ANC-5A13 testified at the public hearing. At the request of the Board the recommendations were reduced to writing and submitted as the recommendations of ANC-5A. The recommendations were as follows:

"1. That the Baker's Local Union #118 be given the special exception to continue accessory parking at the premises 2706 Bladensburg Rd., N.E. only with the following conditions attached:

(a) That the lot be secured with a chain or gate that will be locked whenever the building is closed for business.

(b) That the existing light which illuminates the lot at night be repaired, a protective cover for the bulb be added and that it be kept lit every night.

(c) That the privilege given to the neighborhood children to use the lot area to play on be rescinded and the lot be posted "No Trespassing."

(d) That immediate repair of the fence adjacent to Mrs. Morgan's property be made.

(e) That the 5th District Police Department be on notice that the lot is not to be used for any purpose after closing hours.

2. In our opinion, it is more beneficial to the immediate residents and the Union that the parking lot remain in operation with the responsibility of its maintenance and use resting with the Union. If the application is denied, then the lot remains without the necessary management and oversight."

14. The applicant agreed to meet the conditions imposed by the ANC. By letter of August 27, 1979 counsel for the applicant advised the Board and the objectors as follows:

(a) Chaining of fence after business hours - The chain, lock and posts required to chain off the lot are already in place and the applicant will reinstitute its prior practice of chaining off the lot after business hours.

(b) Repair of lighting fixture - As was stated at the public hearing, the lighting fixture was damaged during a recent thunderstorm. The replacement fixture was ordered August 22, 1979 and is expected to be installed by August 30, 1979.

(c) Posting of no trespassing sign - The applicant posted a "no trespassing" sign on the premises on the afternoon of August 15 and has specifically told neighborhood children they have no authority to play on the lot.

(d) Repair of fence - As noted in the testimony at the public hearing, the applicant has previously repaired the fence on two occasions in the past. However, at this time the vandalism to the fence was of such a degree that the existing lumber could not be reused and new pieces were required to be ordered. The applicant, therefore, signed a contract for the required lumber from Long Fence Company on August 22, 1979 and expects repair work to be completed by August 31, 1979.

(e) Notification of the police department - The applicant on the afternoon of August 15, notified personnel of the 5th District Police Department that the lot is not to be used for any purpose after closing hours.

15. The Board deferred a decision on this application at its public meeting of September 5, 1979 to provide an opportunity for the opposition to review the written recommendation of ANC 5A and the written response of the applicant to the ANC's recommendations. At the public meeting of October 3, 1979, the Board further deferred a decision to its October 3, 1979 public meeting in order to review the entire record.

16. On September 18, 1979 the Office of the Zoning Secretariat requested the Office of the Building and Zoning Administration of DHCD to clarify with Mrs. Ruth Washington, one of the objectants, as to any violations or corrective actions concerning the fence on which she had proposed the aforementioned extension, that should be taken on either her part or on the part of the Amoco Oil Company.

17. The Board is required by statute to give great weight to the issues and concerns of the ANC. The Board agrees with the ANC that it would appear to be more beneficial to the immediate residents and the applicant that the parking lot remain in operation with the responsibility of its maintenance and use resting with the applicant. However it is the Board's finding that the present management has had sufficient time to address itself to the concerns of the immediate neighbors and has failed to do so. The applicant was well aware that it had allowed the children to use the lot. In fact it encouraged it in order to protect its property. The applicant was well aware of the destruction to its own property in terms of damaged fences and litter. It permitted its property to remain unrepaired and littered. Such actions reflect a lack of responsibility on the part of the applicant. A special exception for the use of the lot as accessory parking was first granted in 1970 and continued to date. The prior applications evidence the early concerns of the citizens. The Board finds that the applicant permitted the concerns of the neighbors to grow and deepen while the applicant did little to ameliorate their concerns. This Board cannot predict that the applicant would be more responsive in the future regardless of the remedial measures it now proposes.

CONCLUSIONS OF LAW:

Based on the record the Board concludes that the applicant is seeking a special exception under Sub-paragraph 3101.410 of the Zoning Regulations. In addition to meeting the requirements of Sub-paragraph 3101.410 the applicant has the burden of proof in establishing that the special exception can be granted as in harmony with the general purpose and intent of the Zoning Regulations and that the use will not tend to affect adversely the use of neighboring property in accordance with said Zoning Regulations and Maps. Sub-paragraph 3101.4104 also requires that the parking spaces are so located and facilities in relation thereto are so designed that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditions. Finding of Fact No. 11 evidences an adverse affect on the use of neighboring property and that the present use of the property is objectionable because of noise and other objectionable conditions. The Board concludes that it is not sufficient for the applicant to forget about the parking lot use after the end of the normal working hours. The applicant has a twenty-four hour responsibility to the neighborhood. The applicant cannot indirectly license the use of its property as a playground and hangout for sixteen hours of the day. The prior applications had been granted as a special exception. The use of the subject lot was not a matter-of-right. The applicant has not met its responsibilities. It has not satisfied the requirements of the Zoning Regulations.

The Board has addressed the concerns of the ANC in Finding No. 17. ACCORDINGLY, for the above reasons, the application is DENIED.

VOTE: 3-0 (Charles R. Norris, William F. McIntosh, Leonard L. McCants to deny, Chloethiel Woodard Smith and Ruby B. McZier not present, not voting).

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

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ATTESTED BY: Steven E. Sher  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 17 MAR 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT".